

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

FOR JUNE 7, 2006

7:30 PM COURTHOUSE COUNCIL CHAMBERS

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **June 7, 2006** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive Paul Babb.

ROLL CALL

11 present, 1 absent. Commissioner Bury was excused.

PRAYER

Commissioner Coleman led the commissioners in prayer.

APPROVAL OF THE MINUTES OF THE MAY 17, 2006 REGULAR MEETING AND THE MAY 24, 2006 SPECIAL MEETING

It was moved by Commissioner O'Leary seconded by Commissioner Sheehy and carried by a unanimous verbal vote to approve the Minutes of the Regular Meeting of May 17, 2006 and the Special Meeting of May 24, 2006.

ITEMS NOT ADDRESSED ON THE AGENDA

It was moved by Commissioner O'Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent that in accordance with the provisions of subsection 6 of Rule VI of the Rules and Order of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency condition exists which requires that the Council Rules be suspended to allow Communications No.06-387, 06-388, 06-389 and 06-390 to be added to the agenda of tonight's Regular Meeting of the Council

PUBLIC COMMENT ON ANY PUBLIC MATTER

None

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb reported that we are moving forward with the process of the power generation plant out in the Industrial Park. We did have our first conference call today with the Department of Energy and through Congressman Rehberg's office we do have members of the Department of Energy that are willing to assist us in this process.

Also we do have a semi-professional basketball team that has signed a three-year contract with the Civic Center. Joe Lee represented the Commissioners. The name of the team is the Daredevils.

SECTION I INVITATION FOR PROPOSALS

FOR THE PURPOSE OF RECEIVING PROPOSALS FOR AN OWNER'S ENGINEER AND REFER THE PROPOSALS TO THE ECONOMIC DEVELOPMENT DEPARTMENT FOR REVIEW AND REPORT BACK. Proof of publication was noted and placed on file.

Karen Byrnes, Director of Community Development Department, opened the following two bids.

- (1) MSE Technology Applications, Inc.
P. O. Box 4078
Butte, MT 59702
- (2) Lost Dolphin Enterprises LLP
1133 W. Porphyry
Butte, MT 59701

It was moved by Commissioner O'Leary, seconded by Commissioner Coleman and carried by a unanimous verbal vote to send the two proposals back to the Economic Development Department for review and report back.

SECTION II INVITATION FOR BIDS

SEALED BIDS FOR A PRE-ENGINEERED STEEL BUILDING AND FOUNDATION IN RELATION TO THE SEA CAST, INC. PROJECT AT THE BUTTE-SILVER BOW TIFID NO. 2 AND REFER THE PROPOSALS TO THE ECONOMIC DEVELOPMENT FOR REVIEW AND RECOMMENDATION BACK TO THE COUNCIL. Proof of publication was noted and placed on file.

Karen Byrnes, Community Development Director, opened the following three bids:

- | | | |
|-----|-------------------------|-------------|
| (1) | Markovich Construction | |
| | Base Building #1 and #2 | Alternate |
| | \$1,118,000 | \$1,358,000 |
| (2) | Sowles Co.
Eagan, MN | |
| | Base Building #1 and #2 | Add on |
| | \$838,073 | \$151,275 |
| (3) | Sulway Construction | |
| | Base Building #1 and #2 | Add on |
| | \$1,089,661 | \$233,919 |

It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a unanimous verbal vote to refer the three bids to the Economic Development Department for review and report back.

SECTION III

CONSENT AGENDA

- A.**
1. COMMITTEE OF THE WHOLE MEETING REPORT
 2. FINANCE AND BUDGET COMMITTEE MEETING REPORT
 3. JUDICIARY COMMITTEE MEETING REPORT
 4. PUBLIC WORKS COMMITTEE MEETING REPORT
 5. PERSONNEL COMMITTEE MEETING REPORT

B. COMMUNICATIONS

Before entertaining a motion for approval of the Consent Agenda, Chief Executive Babb called for any segregations. Commission O'Leary called for three "friendly amendments" to Communication Nos. 06-345, 06-346 and 16-347. He stated at the time he made those recommendations he wasn't aware that the resolutions had already been submitted. The recommendation for 06-345 will be approve, cross reference with Resolution 06-46 and place on file. On 06-346 the recommendation will be approve, cross reference with Resolution No. 06-45 and place on file. On 06-347 the recommendation will be approve, cross reference with Resolution No.06-44 and place on file.

Commissioner Sheehy asked to segregate Section B, Communication No. 06-345.

Commissioner O’Leary then moved for the Consent Agenda, Section A, Items 1 through 5 and Section B, items 1 through 70 with the exception of

Item No. 29. The motion was seconded by Commissioner Coleman and passed with a unanimous verbal vote.

Communication No. 06-345

Commissioner Sheehy said he didn't wish to change the recommendation, but he thought we should review Ordinance 82 so that everyone would feel they were treated fairly. **Commissioner O'Leary then moved for approval of the request in 06-345, cross reference it with Resolution 06-46 and place on file. The motion was seconded by Commissioner Coleman and carried by a unanimous verbal vote.**

SECTION IV

COMMUNICATIONS TO BE READ AND ACTED ON

1. 06-339 April Markovich, requesting approval of change to Rocky Ridge Minor Subdivision plat.

April Markovich, 259 Belandi Mountain, Butte, MT 59701. She explained she was requesting a correction to be made to her Plat, Rocky Ridge Minor Subdivision . Lot K-1 was inadvertently labeled K-1. It should have been label remainder. It was not discovered until after the plat was approved and filed. Commissioner Kerns said he felt it needed to go back to the Planning Board and come forward for the amendment. He made that in the form of a motion which was seconded by Commissioner Coleman. On the question Commissioner O'Leary asked her to explain why it needed to be named a remainder. She explained and said it has been sitting in the Planning Dept. for six months. Commissioner Dunlap agreed with Commissioner Kerns to send it back but put some kind of time limit on it. Commissioner Kerns amended his motion that within a six-week period it would be acted upon by them and then come back to this body with a recommendation. The motion was seconded by Commissioner Coleman. Commissioner Sheehy asked for Steve Hess from the Planning Department to come forward. Mr. Hess said the Planning Department would be willing to take it back and make a report. County Attorney McCarthy explained the law requires that when you approve a subdivision you have to set forth the reasons why you approve it. The Council approves a report that has been prepared. You cannot change or modify any of this without a report. The motion carried with a unanimous verbal vote.

EMERGENCIES

Communication No. 06-387

John P. Walsh, Sheriff, requesting approval of line item budget transfers.

It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a unanimous verbal vote to refer Communication No. 06-387 to the Finance and Budget Committee

Communication No. 06-388

John C. Van Daveer, Director Public Works Department, requesting approval of HKM Engineering, Inc. and Pioneer Technical Services, Inc. as respondent for new Wastewater Treatment Facility and approval to enter into contract negotiations.

It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a unanimous verbal vote to approve of the request in Communication No. 06-388 and place on file.

Communication No. 06-389

John C. Van Daveer, Director Public Works Department, requesting approval of Morrison-Maierle, Inc. as successful respondent to RFQ for a Metro Sewer Wastewater Treatment Plant - Nutrient Upgrade and approval to enter into contract negotiations.

It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a unanimous verbal vote to approve of the request in Communication No. 06-389 and place on file.

Communication No. 06-390

Robert M. McCarthy, County Attorney, regarding proposed settlement – McLeod v. Babb and the City and County of Butte-Silver Bow, Cause No. CV-05-86-BU-RFC.

County Attorney Bob McCarthy explained that a settlement offer has been made to settle this case for \$225,000 damages, payment of Mr. Fleming’s attorney fee (which is set by the court and he would guess it would be in the range of \$45,000), and a position of employment. There is an entry-level position vacant in the Law Enforcement Department. The Sheriff has agreed to hold this position open and Mr. Clark has stated that Mrs. McLeod has the qualifications for this entry-level position. Mr. Cronnister recommended that this be settled at \$225,000. The costs will go up if it goes to trial. We are paying for three lawyers here, Mrs. McLeod’s lawyer, Butte-Silver Bow’s lawyer and Mr. Babb’s lawyer and those fees could triple if it goes to trial. Mr. McCarthy recommended that council approve this tonight so they can fill this position.

Commissioner Sheehy moved to approve the settlement in the amount of \$225,000 in damages, payment of the attorney fee set by the court and offering Mrs. McLeod this entry-level position. It was seconded by Commissioner Coleman and carried with a roll call vote of 9 yeas and 2 nays. Commissioners O’Leary and Dunlap voting nay.

SECTION V ORDINANCES AND RESOLUTIONS – REFERRED TO JUDICIARY

1. COUNCIL BILL NO. 06-6

AN ORDINANCE CREATING AN APPOINTED BOARD TO BE ENTITLED “LAW ENFORCEMENT ADVISORY BOARD” AND TO BE NUMBERED CHAPTER 2.26 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-SB MC); SETTING FORTH THE COMPOSITION, DUTIES AND REPORTING REQUIREMENTS OF THE BOARD; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

2. COUNCIL RESOLUTION NO. 06-39

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW LAW ENFORCEMENT DEPARTMENT FROM THE MONTANA DEPARTMENT OF CORRECTIONS TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

3. COUNCIL RESOLUTION NO. 06-40

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW LAW ENFORCEMENT DEPARTMENT FROM THE BUTTE-SILVER BOW DETENTION CENTER CANTEEN TO BE EXPENDED IN THE GENERAL FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

4. COUNCIL RESOLUTION NO. 06-47

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE
AMENDED PLAT OF BLOCK 18 OF THE NORTHERN PACIFIC ADDITION
TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF

MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

5. COUNCIL RESOLUTION NO. 06-48

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE GODTLAND MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

6. COUNCIL RESOLUTION NO. 06-49

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE PINE RIDGE MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW; STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

7. COUNCIL RESOLUTION NO. 06-50

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE BUTTE SKI CLUB NO. 5 MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW; STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

8. COUNCIL RESOLUTION NO. 06-52

A RESOLUTION CREATING SPECIAL IMPROVEMENT DISTRICT NO. 1024 FOR THE PURPOSE OF MAINTAINING AND INSTALLING AN ELECTRICAL LIGHTING SYSTEM; DESIGNATING AND DESCRIBING THE BOUNDARIES OF SAID PROPOSED SPECIAL IMPROVEMENT LIGHTING DISTRICT; STATING THE PURPOSE OF AND THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE IN SAID SPECIAL IMPROVEMENT DISTRICT; ESTIMATING THE APPROXIMATE COST OF MAINTAINING AND SUPPLYING ENERGY THEREOF FOR THE FIRST YEAR; FINDING, DETERMINING, AND DECLARING THAT SUCH PROPERTY SHOULD BE ASSESSED FOR COST THEREOF OF MAINTENANCE AND ENERGY AND EXTENDING SUCH ASSESSMENT TO BE IN SEMI-ANNUAL INSTALLMENTS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

9. COUNCIL RESOLUTION NO. 06-53

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE PETRITZ MINOR SUBDIVISION – SUMMARY REVIEW OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

10. COUNCIL RESOLUTION NO. 06-54

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE FINAL PLAT OF THE VALENTINE MINOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN

**SECTION VI ORDINANCES & RESOLUTIONS –
FINAL READING**

1. COUNCIL RESOLUTION NO. 06-37

A RESOLUTION AMENDING THE BUDGET DURING THE FISCAL YEAR AFTER CONDUCTING A PUBLIC HEARING AT A REGULARLY SCHEDULED MEETING OF THE COUNCIL OF COMMISSIONERS IN ACCORDANCE WITH SECTION 7-6-4006, MCA; APPROPRIATING UNANTICIPATED REVENUE TO THE BUTTE-SILVER BOW PUBLIC WORKS DEPARTMENT FROM THE MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS LAND AND WATER CONSERVATION FUND TO BE EXPENDED IN THE PUBLIC WORKS, PARKS AND RECREATION FUND AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 06-37 on final reading and passed having been deemed fully read at length.**

2. COUNCIL RESOLUTION NO. 06-38

A RESOLUTION GRANTING CONDITIONAL APPROVAL OF THE PRELIMINARY PLAT OF THE BELLA ESTATES MAJOR SUBDIVISION OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PROVIDING FOR THE REPEAL OF ALL PARTS OF RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11**

yeas, 0 nays and 1 absent to place Council Resolution No. 06-38 on final reading and passed having been deemed fully read at length.

SECTION VII

ORDINANCES & RESOLUTIONS – SUSPENSION OF THE RULES

It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to suspend the rules for the purpose of passing Council Resolutions No. 06-44, 06-45, 06-46 and 06-51 by waiving subsection 7 of Rule XXXVI of the Rules and Order of Business of the Council of Commissioners, thereby haven’t them considered for advanced passage without reference to the Judiciary Committee.

1. COUNCIL RESOLUTION NO. 06-44

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF REAL PROPERTY KNOWN AS 332 WEST BOARDMAN STREET, LEGALLY DESCRIBED AS LOT 2 IN BLOCK 2 OF THE MOUNT MORIAH LODE AN UNFILED PLAT, WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW, MONTANA FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 06-44 on final reading and passed having been deemed fully read at length.

2. COUNCIL RESOLUTION NO. 06-45

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF REAL PROPERTY KNOWN AS 409 WEST BOARDMAN STREET, LEGALLY DESCRIBED AS LOTS 10 AND 11 IN BLOCK 1 OF THE MOUNT MORIAH LODE, AN UNFILED PLAT, WITHIN THE CITY AND COUNTY OF BUTTE-SILVER BOW, MONTANA FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O’Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 06-45 on final reading and passed having been deemed fully read at length.

3. COUNCIL RESOLUTION NO. 06-46

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF VACANT PROPERTY KNOWN AS 236 SOUTH

IDAHO STREET, LEGALLY DESCRIBED AS THE NORTH 18 FEET OF THE WEST 50 FEET OF LOT 10 AND THE SOUTH 12 FEET OF THE WEST 50 FEET OF LOT 11, ALL WITHIN BLOCK 50 OF THE ORIGINAL BUTTE TOWNSITE OF THE CITY AND COUNTY OF BUTTE-SILVER BOW COUNTY, MONTANA FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O'Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 06-46 on final reading and passed having been deemed fully read at length.

4. COUNCIL RESOLUTION NO. 06-51

A RESOLUTION APPROVING TAX BENEFIT FOR NEW AND EXPANDING OPERATIONS IN BUTTE-SILVER BOW CITY-COUNTY BY UNIVERSAL ATHLETIC SERVICE, ALL IN ACCORDANCE WITH THE PROVISIONS OF SECTION 15-24-1402, MCA AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. It was moved by Commissioner O'Leary, seconded by Commissioner Coleman and carried by a roll call vote of 11 yeas, 0 nays and 1 absent to place Council Resolution No. 06-51 on final reading and passed having been deemed fully read at length.

ADJOURNED

There being no further business to come before the Council, it was moved by Commissioner O'Leary, seconded by Commissioner Coleman to Rise to the Call of the Chair.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER